

**State Vs. Surinder Kumar**

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**Court :** Himachal Pradesh

**Decided On :** Sep-26-1975

**Reported in :** 1976CriLJ892

**Judge :** Chet Ram Thakur, J.

**Appellant :** State

**Respondent :** Surinder Kumar

**Judgement :**

ORDER

**Chet Ram Thakur, J.**

1. This is a criminal reference under Section 438 of the Code of Criminal Procedure 1898 made by the Sessions Judge, Hamirpur, recommending the enhancement of the sentence for the offence under the Prevention of Food Adulteration Act (shortly called the Act) for which Surinder Kumar had been convicted by the trial Magistrate but had only been let off with a fine of Rs. 50 only.

2. On May 30, 1973, Surinder Kumar was found carrying a can containing 4 K. G. of cow's milk in Hamirpur Bazar. On a sample being taken and all the formalities having been observed the Food Inspector sent a sample to the Public Analyst who found the same adulterated, A complaint was filed under Section 16(1)(a)(i) of the Act. The accused pleaded guilty and the learned Chief Judicial Magistrate

accordingly convicted him, but in view of the fact that he had made a confession, imposed a sentence of fine of Rs. 50 only. The State filed the revision before the learned Sessions Judge who recommended the case for enhancement of the Sentence.

3. Under Section 16 of the Act the minimum punishment to be imposed is six months and a fine of Rs. 1,000, The Magistrate, however, has been given the power to award lesser punishment but for that as contemplated under the proviso there must be adequate and special reason. Here in the instant case no adequate or special reason has been shown except that the accused made a confession. But this alone, in my opinion, cannot be a mitigating circumstance for passing such a nominal sentence of fine of Rs. 50 only, when admittedly it is an anti-social menace. The person who adulterates articles of food wants to enrich himself by making money by endangering the lives of the society or by selling the articles of food under the pretext of pure food and makes more money for the articles which actually they are not. Therefore, in these circumstances, the punishment should be 'exemplary.

4. The learned Counsel for the accused contends that this confession by the accused itself was a mitigating circumstance and therefore the Magistrate was justified in passing a lesser sentence and that this Court should not enhance the sentence keeping in view the circumstances of the case, He has also cited *Dilo Sao v. State of Bihar* 1971 Cri LJ 1047 (Pat.). In this case the petitioner owned a small retail shop with a capital of Rs. 1,000 only. For the purposes of running his shop he brought the goods from other bigger shops and sold them. It was held that it may be that the petitioner himself was not aware of the fact that there was excess lead in turmeric which he had purchased from another bigger shop and it was on that ground that his sentence of fine was reduced from Rs. 1,000 to Rs, 100 by the High Court. The next authority cited is *Babu Lai v. State* ILR (1969) 1 All 71. In this case also the petitioner was found carrying milk and at the request of the Food Inspector he sold the desired quantity of milk and on a sample sent to the Public Analyst it was found adulterated and in that case the Magistrate sentenced him to a fine of Rs. 1,000 and in default of payment of fine to undergo rigorous imprisonment for six months. The accused filed an appeal before the

Sessions Judge, who dismissed the appeal but made a reference to the High Court that in his opinion the sentence awarded by the Magistrate was not legal. One of the submissions made before the High Court in opposing the reference was that the accused admitted having sold milk to the Food Inspector for the purpose of analysis and did not challenge the factum of sale and that was a mitigating circumstance in the matter of awarding punishment. The High Court accepted this submission of the accused and held that in those circumstances it was permissible to impose a sentence of fine of Rs. 500 only although the Magistrate did not assign any special and adequate reasons in writing in his judgment for not imposing the minimum sentence.

5. The further authority that has been relied upon is *District Board, Patna v. Mahadeo Sao* 1975 Cri Lj 1236 (Pat). In this case also the Magistrate imposed a fine of Ks. 100 only for manufacturing, selling and storing for sale, nimki biscuits and pawroti without any licence. The High Court, however, enhanced the sentence of fine from Rs. 100 to Rs. 250 which was also not adequate but it was so done on the ground that there was long delay after which the sentence was going to be enhanced by the High Court and it was in itself an adequate reason for attracting the proviso to Section 16.

6. In *Dilo Sao's case* 1971 Cri LJ 1047 (Pat.) (supra) the sentence was reduced in view of the fact that the petitioner was the owner of a small retail shop and that he had been making purchases from bigger shops and that it was possible that the petitioner himself was not aware of the fact that there was excess lead. In the second case, i.e. *Babu Ram* ILR (1969) 1 All 71 (supra) the sentence imposed by the Magistrate was maintained and the recommendation was rejected on the ground that the accused had admitted having sold milk to the Food Inspector. In the instant case also there is no doubt that he has admitted having sold the milk and also he admitted his guilt, but keeping in view the observations of their Lordships of the Supreme Court in *Pyarali K. Tejani v. Mahadeo Ramchandra Dange* : 1974 CriLJ313 it will not be proper to let off the accused with a nominal fine of Rs. 50 only. The observation made in para 4 of the aforesaid judgment of their Lordships of the Supreme Court is:

A close-up of the law relevant to this case will help focus attention on the criminal area into which the appellant is alleged to have entered. The central concept of the statute is prevention of adulteration of food in the sombre background of escalating manoeuvres by profiteers who seek to draw dividends from the damage to the health of the people caused by trade in adulteration. The social sternness and wide sweep of the statute can be realised from the thought that an insidious host that internally erodes the vitality, of a nutritionally deficient nation is, in one sense, a greater menace than a visible army of aggression at our frontiers and so the police power of the State must reach out to protect the unsuspecting community with overpowering laws against those whose activities are a serious hazard to 'public health. And so a minimum jail term is fixed in the Act itself.

It was a case where the respondent had sold and retained for selling the State of H. P. v. S. Harbans Singh (C. R. Thakur J.) Cri. L. J. Brand scented supari with saccharin and cyclamate, prohibited artificial sweetener, adulterated supari in contravention of Section 7(i)(ii), Rule 47 of the Act. The respondent was convicted and sentenced to a fine of Rs. 100 only for certain special reasons mentioned by the Magistrate. In paragraph 25 of the judgment their Lordships observed;

Indeed, the education of the sentencing judge, particularly in the context of economic offences, is a yawning gap in our criminal system and the near-escape of the accused before the trial court in this case, prevented only by the Criminal Revision to the High Court, permits us to observe that the magistracy in the country has yet to realise that 'there are occasions when an offender is so anti-social that his immediate and sometimes prolonged confinement is the best assurance of society's physical protection'. Or, we may add, even in less severe situations heavy enough fine to drive him out of the trade, if he tried the trick again. There is injustice to the community- the invisible but immense victim of the crime- in the court's misplaced sympathy for the culprit.

So, in view of these observations of the Supreme Court, I think the present is also a case which does not deserve sympathy and it being an anti-social offence there must be some deterrent punishment, and, in so far as the fine of Rs. 50 is concerned it is ridiculously low and nominal.

7. Consequently, keeping in view the admission made by the accused I would, therefore, enhance the sentence of fine to Rs. 300 only. The fine already imposed, if paid, shall be deducted from this amount of fine imposed by this Court. In default of payment of fine, he shall undergo S.I. for three months.

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